

OGC Has**SECURITY INFORMATION****FILE**

MEMORANDUM:

10 July 1953

SUBJECT : Proposed [REDACTED]
 REAL ESTATE AND CONSTRUCTION - ACQUISITION, IMPROVEMENTS, MAINTENANCE, AND UTILITIES FOR SPACE REQUIREMENTS

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1. Paragraph 4b of [REDACTED] states the Government rule that the term of leases must be limited to the Fiscal Year. This restriction is difficult to apply in foreign areas, as is the prohibition in paragraph 4d against payment of rent in advance. It is frequently the custom in the United States to pay rent monthly in advance, and in many foreign areas a deposit of a month's rent or more is required. To care for this situation, several of the Government departments are seeking appropriate legislation. The Departments of State, Justice and Commerce Appropriation Act of 1954 (HR 4974) provides on page 4, lines 1-4, for payment of "rental or lease, for periods not exceeding ten years, of offices, buildings, grounds and living quarters for the use of the Foreign Service, for which payments may be made in advance;". The Department of Defense Appropriation Act of 1954 provides as follows: "SEC. 602. Section 3648, Revised Statutes, [prohibiting advances of public moneys] shall not apply in the case of payments made from appropriations contained in this Act, (1) to payments made in compliance with the laws of foreign countries or their ministerial regulations, (2) to payments for rent in such countries for such periods as may be necessary to accord with local custom, or (3) to payments made for tuition."

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3. Recently, after consultation with this office, permission was given to a representative of the Real Estate and Construction Division to secure quarters for [REDACTED] under leases running beyond the Fiscal Year. The authority to do this, under proper circumstances, is found in Section 10 of Public Law 110.

3. It appears permissible from a legal standpoint for leases in foreign areas to run beyond the Fiscal Year if this is required by local custom or operational necessity, provided always that there is a direct relation to the carrying out of the functions of the Agency as provided in Section 10 of Public Law 110. Perhaps the wording of the last two lines of paragraph 4b could be improved. Some such wording as the following might be substituted: "unless special circumstances or local customs or conditions require different provisions. However, the lease term shall not be greater than two years unless prior approval has been granted by headquarters." To conform with this, it is suggested that the second sentence of paragraph 6a be changed to read: "However, the duration of leases must be limited as provided in paragraph 4b above and, if possible, leases should contain a thirty-day cancellation clause and an option for renewal."

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4. Paragraph 4d, regarding advance payment of rent, can be amended to read as follows: "Leases will not require rental payments (including key money, if any) of more than three months in advance without prior approval by headquarters."

[REDACTED]

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6. It is recommended that the following words be added at the end of paragraph 6b of [REDACTED] "and a written agreement thereon should be obtained."

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7. In paragraph 2b of [REDACTED] the word "or" should be inserted at the end of subparagraphs (1) and (2).

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8. The following sentence may be added at the end of paragraph 2e of [REDACTED] "Title to real property will not be acquired in the name of a "cut-out" without the prior approval of headquarters."

9. Subject to the above comments, these two regulations appear acceptable from a legal standpoint.

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Assistant General Counsel

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